

ITPGR GB-1 HIGHLIGHTS: WEDNESDAY, 14 JUNE 2006

On Wednesday, 14 June 2006, Working Group I (WG-I) started consideration of the rules of procedure and discussions on compliance. Working Group II (WG-II) continued consideration of the funding strategy, and discussed the appointment of the Secretary, the establishment of a technical advisory committee, and the relationship with the Global Crop Diversity Trust (the Trust). The contact group on the draft standard Material Transfer Agreement (MTA) met in the morning and in the evening, and the budget committee reconvened in the evening.

WORKING GROUP I

RULES OF PROCEDURE: The Secretariat introduced the draft rules of procedure and annotated draft rules of procedure (IT/GB/06/3 and Add.1). Delegates discussed and eventually agreed to base deliberations on the original draft rules with inserted changes arising from the annotated text. Canada for NORTH AMERICA proposed that the rules should also apply to the Governing Body's subsidiary bodies, but delegates decided against it.

Delegates agreed to language regarding: convening special sessions of the Governing Body at the request of a party within a fixed time period after having received support of one third of the parties, the length of which remains to be decided; requiring the majority of parties as the quorum for Governing Body sessions; and providing the agenda and notifying observers twelve, rather than eight, weeks before a Governing Body session. Delegates rejected text on communicating representatives' names, in so far as possible, 15 days before a Governing Body session.

On decision making, the UK for EUROPE and Zambia for AFRICA supported making decisions on procedural matters by simple majority and on substantive issues by a two-thirds majority as a last resort when consensus cannot be achieved. Panama for GRULAC, Australia for the SOUTHWEST PACIFIC, Indonesia for ASIA, and NORTH AMERICA opposed this suggestion, calling for consensus-based decision making in accordance with the Treaty. WG-I Chair Harvey called for informal consultations on the issue.

NORTH AMERICA, the SOUTHWEST PACIFIC and EUROPE, opposed by AFRICA, GRULAC and YEMEN, proposed deleting text on using the core budget for developing country representatives' and independent experts' participation in the meetings of the Governing Body and its subsidiary bodies.

Among other things, delegates agreed to delete a rule stating that amendments to the rules of procedure may only be proposed by one quarter of parties, and to retain a rule confirming the overriding authority of the Treaty over the Governing Body rules of procedure.

MTA: MTA Contact Group Chair Godfrey Mwila (Zambia) reported on the group's progress in addressing the draft standard MTA on Tuesday, and on three smaller groups that met on Wednesday morning to discuss, respectively: new preambular text, applicable law and dispute settlement; definition of "product;" and linkages between MTA parties and ITPGR parties, third party beneficiary rights, and benefit-sharing and intellectual property rights. Mwila indicated that defining "product" was an important outstanding issue, welcoming participants' efforts to harmonize broad and narrow definitions, and noting that agreement on this definition would lead to resolution of issues related to benefit-sharing payments.

COMPLIANCE: The Secretariat introduced a document on draft procedures and operational mechanisms to promote compliance and address issues of non-compliance (IT/GB-1/06/7). The SOUTHWEST PACIFIC, EUROPE and AFRICA called for supportive measures, with the SOUTHWEST PACIFIC cautioning that the compliance mechanisms should not duplicate the Treaty dispute settlement. EUROPE proposed that compliance mechanisms be non-adversarial, non-judicial, cooperative, transparent, and forward-looking; and CANADA proposed that they be adapted to specific Treaty concerns.

EUROPE, AFRICA and CANADA supported the establishment of a compliance committee, whereas the US said this would be premature, instead urging parties to mandate the Governing Body to address compliance issues. ASIA called for mechanisms reflecting Treaty provisions on farmers' rights and the Multilateral System. JAPAN said compliance should not undermine party national sovereignty. Delegates agreed that procedures and measures include monitoring, and offering assistance and advice, including legal advice, when needed, in particular to developing countries and economies in transition. CUBA suggested that assistance should be offered when needed "and requested," which remained bracketed.

The SOUTHWEST PACIFIC, opposed by SWITZERLAND and others, proposed that compliance procedures and mechanisms be non-legally binding. Delegates also debated whether the operation of compliance mechanisms should take into account an adequate balance between developed and developing countries.

Delegates discussed whether to base the composition of the compliance committee on FAO or UN regions. The SOUTHWEST PACIFIC, CANADA and BRAZIL, opposed

by EUROPE and YEMEN, requested deletion of a reference to committee members "serving in their personal capacity," with CANADA proposing that they "shall act objectively and in the best interest of the Treaty." CANADA, the SOUTHWEST PACIFIC, EUROPE, AFRICA, INDIA and BRAZIL proposed that the committee meet on a needs basis, suggesting different modes of linking its meetings to those of the Governing Body. YEMEN proposed that the committee meet "once a year, unless it decides otherwise." EUROPE proposed that the committee's rules of procedure include rules on confidentiality, conflict of interest and electronic decision making.

On the compliance committee's functions, delegates discussed whether to: refer to "issues" rather than "cases" of non-compliance; take into account only information submitted by parties or also information submitted by other entities; mandate the committee to take "measures," "actions" or make "recommendations;" and limit the committee's monitoring function. EUROPE suggested that the committee report to the Governing Body on closed issues of non-compliance, while the SOUTHWEST PACIFIC expressed concern about breaking the confidentiality of the committee's proceedings.

On procedures, the SOUTHWEST PACIFIC suggested that the committee only receive submissions from parties with respect to themselves, whereas EUROPE preferred that parties also submit information on other parties, and YEMEN proposed that the Governing Body should also submit information.

WORKING GROUP II

FUNDING STRATEGY: Continuing negotiations on the funding strategy, the EU, opposed by BRAZIL, proposed new text emphasizing specific assistance for the conservation of plant genetic resources for food and agriculture in developing countries and countries with economies in transition. Delegates decided to delete a paragraph on the target for funding.

Regarding resources under the Governing Body's direct control, CANADA and AUSTRALIA argued against the establishment of a technical committee, concerned about funding implications. Alternatively, the EU, opposed by CANADA, suggested that the work be conducted by the Governing Body with assistance from an advisory committee and external experts. The EU also argued against text stating that the permanent technical committee will report on disbursements at each session of the Governing Body, noting that the Governing Body should be responsible for this matter.

On resources outside the Governing Body's direct control, AUSTRALIA suggested that developed countries "may" provide financial resources. The EU, supported by UGANDA and opposed by GRULAC and INDIA, proposed that such funds can be used for non-Annex I crops. Delegates agreed to keep a reference to funds provided through bilateral, regional and multilateral channels.

On monitoring, the EU suggested that the Secretariat compile and post all submitted information online. Many delegates supported reviewing the funding strategy at every second session of the Governing Body. The EU added language allowing for possible further development of annexes to the funding strategy, and requested deletion of provisional annexes on a strategy for promoting voluntary contributions and targets for funding.

In the evening, following informal consultations at lunchtime, WG-II agreed to delete text on the advisory committee reporting on disbursement of funds. On resources under the Governing Body's direct control, delegates agreed to delete language on voluntary contributions to the funding strategy from a broad range of sources. Delegates compromised on a paragraph on the monitoring role of the Governing Body over the implementation of the funding strategy. They also agreed to text on the frequency with which the Governing Body will review the funding strategy, being once every second regular session or whenever necessary. Discussions continued into the night.

APPOINTMENT OF THE SECRETARY: The Secretariat introduced the relevant document (IT/GB-1/06/11), calling for comments on the appendix containing the Secretary's draft terms of reference. EUROPE argued that the Secretary's independence may be compromised if he is required "to perform such other related duties that the Director-General may assign," instead proposing that the Secretary perform "*ad hoc* related duties that the Director-General may from time to time assign."

On the question of desirable qualities, GRULAC argued that the Secretary should have conservation experience. Delegates decided to address the term and rotation of the Secretary's mandate at a later stage.

TECHNICAL ADVISORY COMMITTEE: The Secretariat introduced the document on the possible establishment of a permanent technical advisory committee (IT/GB-1/06/8). EUROPE, AUSTRALIA and CANADA opposed the establishment of a permanent committee, raised the possibility of a future non-permanent committee, and called for revisiting the issue during the Governing Body's second session. AFRICA, INDIA, MALAYSIA and GRULAC demanded the immediate establishment of a permanent committee, with AFRICA and INDIA preferring an independent committee rather than one linked to the CGRFA.

RELATIONSHIP WITH THE TRUST: Amb. Fernando Gerbasi, the Trust Chair, introduced a draft relationship agreement between the Governing Body and the Trust (IT/GB-1/06/14).

On dispute settlement, the EU suggested referring disputes to an existing mechanism rather than creating a new one. On the procedures for appointing members of the Trust Executive Board, the EU, CANADA and BRAZIL called for regional balance, with INDIA adding that "biodiversity-endowed" areas be adequately represented. BRAZIL called for consultations with governments in the appointment process, and SWITZERLAND for an effective, transparent and participatory method for candidate selection.

MTA CONTACT GROUP

In an evening contact group session, delegates agreed, among other things, to: references to the right of the third party beneficiary to initiate dispute settlement, and to request appropriate information, to be made available by both the provider and the recipient, including samples of material, as necessary, regarding their obligations in the context of the MTA. They decided to delete a preambular reference to the rights and obligations of parties.

Delegates did not agree to, *inter alia*: a reference subjecting MTA parties to the provisions of the Treaty; text stating that applicable law shall include decisions of the Governing Body; the definition of "product;" and a reference stating that transfers of PGRFA under development do not constitute commercialization that would trigger benefit-sharing obligations. Discussions continued into the night.

IN THE CORRIDORS

With the Spanish soccer team tackling its first World Cup game and being more successful in its task than the MTA contract group, at least some "local" delegates sported big smiles on their faces. Many others, however, could not ignore the cloud looming over MTA negotiations on Wednesday, with some even fearing a "collapse" due to the apparent divergence among regions' positions. Some attributed the slow progress of the MTA negotiations to a regional group's negotiating strategy of making the adoption of the MTA contingent upon that of the funding strategy. With deliberations on the funding strategy taking some steps forward, some delegates are still hopeful that the Governing Body will score on the MTA before Friday's final whistle.